

# MARSHALL DENNEHEY WARNER COLEMAN & GOGGIN

ATTORNEY AT LAW WWW.MARSHALLDENNEHEY.COM

A PROFESSIONAL CORPORATION

620 Freedom Business Center, Suite 300 · King of Prussia, PA 19406  
(610) 354-8250 · Fax (610) 354-8299

Direct Dial: 610-354-8498  
Email: mjdennehey@mdwcg.com

PENNSYLVANIA	DELAWARE
Bethlehem	Wilmington
Doylestown	OHIO
Erie	Cleveland
Harrisburg	FLORIDA
King of Prussia	St. Lauderdale
Philadelphia	Jacksonville
Pittsburgh	Orlando
Scranton	Tampa
NEW JERSEY	NEW YORK
Cherry Hill	Long Island
Roseland	New York City

February 7, 2013

## BY FACSIMILE

Honorable Lawrence P. Stengel  
United States District Court for the Eastern District of Pennsylvania  
U. S. Courthouse  
601 Market Street  
Room 3809  
Philadelphia, PA 19106

RE: FRANCIS JOYCE v. RICHARD DEVASTHEY, et al  
Civil Action No.: 12-834  
Our File No.: 21257-00718

Judge Stengel:

Our office represents the Defendant, Mango & August, Inc., in the above noted matter, presently pending before you. On January 15, 2013, you held a status conference among all counsel in this case, which has been Stayed for some time after it was removed from the Court of Common Pleas of Philadelphia County to the United States District Court for the Eastern District of Pennsylvania. Prior to its removal, my client, Mango & August, Inc., had filed a Motion to Amend Its Answer to the Joinder Complaint filed against it by Defendant, Richard Devasthey. That Motion has not been ruled upon since the case was removed to Federal Court. I have enclosed a copy of the Motion and the proposed Answer to the Joinder Complaint by my client, the originals of which were filed with the Court of Common Pleas of Philadelphia County on February 16, 2012.

I would greatly appreciate your consideration in ruling upon our Motion to Amend the Answer to the Joinder Complaint previously filed in the Court of Common Pleas of Philadelphia County so that the parties, including FDIC, could then respond to the pleading. At the recent telephone status conference which you held with all counsel, counsel for FDIC indicated that she would respond to the Crossclaims made by my client and

Honorable Lawrence F. Stengel


February 7, 2013

Page 2

---

co-defendant, Richard Devastey, and in that regard, I request your consideration in ruling on our Motion to Amend our Answer to the Joinder Complaint. Thank you.

Very truly yours,

  
Michael J. Dempsey

MJD;kmd

Encls.

cc: Lee D. Rosenfeld, Esq. (Via e-mail)  
Susan J. Wiener, Esq. (Via e-mail)  
Pauline J. Manos, Esq. (Via e-mail)  
Jeffrey S. Saltz, Esquire (Via e-mail)  
Jeffrey Crooks (Regular Mail)  
Mary Crooks (Regular Mail)  
Thomas Gleason, Jr. (Regular Mail)  
Mary Gleason (Regular Mail)

ALL WITHOUT ENCLOSURES

25/2160810.v1

**FILED**  
 16 FEB 2012 02:49 pm  
**Civil Administration**  
 A. LEBRON

FRAN CES JOYCE	:	COURT OF COMMON PLEAS
	:	PHILADELPHIA COUNTY, PA
v.	:	
RICHARD DEVASTEY	:	JUNE TERM, 2011
JEFFREY CROOKS;	:	
MARY CROOKS;	:	
THOMAS GLEASON, JR.;	:	
MARY GLEASON;	:	
CITY OF PHILADELPHIA;	:	
PROGRESS BANK OF FLORIDA;	:	
v.	:	
BERNARD AUGUST, Ind. And	:	
v/a MARISA MANGO REAL ESTATE	:	
Additional Defendant	:	NO. 0031

**ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2012, upon consideration of Additional Defendant's Motion to Amend its Answer and New Matter to the Joinder Complaint, and any Responses thereto, it is hereby ORDERED and DECREED that the Motion is GRANTED, and Additional Defendant is permitted to file its Amended Answer to the Joinder Complaint in this matter. It is further ORDERED that any Response to Moving Additional Defendant's Amended Answer, New Matter and Crossclaims be filed within twenty (20) days of service thereof.

BY THE COURT:

1.

Case ID: 110600031  
 Control No.: 12022744

21257.00718/26/1884048.v.1

MARSHALL, DENNEHEY, WARNER,  
COLEMAN & GOGGIN

BY: MICHAEL J. DEMPSEY, ESQUIRE

Identification No. 34454

620 Freedom Business Center, Suite 300

King of Prussia, PA 19406

(610) 354-8498 (610) 354-8299 (FAX)

Attorney for Defendants

Bernard August, Inc. And t/a Marisa Mango Real Estate

FRANCES JOYCE	:	COURT OF COMMON PLEAS
	:	PHILADELPHIA COUNTY, PA
v.	:	
RICHARD DEVASTEY	:	JUNE TERM, 2011
JEFFREY CROOKS;	:	
MARCY CROOKS;	:	
THOMAS GLEASON, JR.;	:	
MARCY GLEASON;	:	
CITY OF PHILADELPHIA;	:	
PROCESS BANK OF FLORIDA;	:	
v.	:	
BERNARD AUGUST, Inc. And	:	
t/a MARISA MANGO REAL ESTATE	:	
Additional Defendant	:	NO. 0031

**NOTION OF ADDITIONAL DEFENDANT TO AMEND ITS ANSWER AND NEW  
MATTER TO THE JOINDER COMPLAINT**

Additional Defendant, Mango and August, Inc. (Incorrectly identified as Bernard August, Individually and t/a Marisa Mango Real Estate), by and through its attorneys, Marshall, Dennehey, Warner, Coleman and Goggin, respectfully request this Honorable Court's permission to file the attached Amended Answer, New Matter and Crossclaims to the Joinder Complaint in the above-captioned matter, and, in support thereof, avers as follows:

1. On December 19, 2011, a Joinder Complaint was filed against your Petitioner, Bernard August, Individually and trading as Marisa Mango Real Estate, with the Court. (Attached hereto is a copy of the Joinder Complaint, marked as Exhibit "A".)

Case ID: 110600031  
Control No.: 12022744

2. Thereafter, on January 26, 2012, Defendant, Bernard August, Individually and trading as Marisa Mango Real Estate, filed its Answer to the Joinder Complaint. (Attached hereto is a copy of the Answer of Defendant, Bernard August, Individually and trading as Marisa Mango Real Estate to the Joinder Complaint, marked as Exhibit "B".)

3. The allegations in the Joinder Complaint relate to the underlying lawsuit by Plaintiff, Francis Joyce, against Richard Devastey, Jeffrey Crooks, Mary Crooks, Thomas Gleason, Jr., Mary Gleason, Progress Bank of Florida and City of Philadelphia. (Attached hereto is a copy of the underlying personal injury Complaint, marked as Exhibit "C".)

4. The underlying Complaint in the matter captioned, Frances Joyce v. Richard Devastey, et al, alleges that Plaintiff, Francis Joyce, was attacked by a dog which caused him to run across two properties owned by Progress Bank of Philadelphia and Richard Devastey, respectfully. The Complaint alleges that Plaintiff was injured as a joint result of the negligence of the dog owners and the two property owners for alleged defects in their sidewalks.

5. Pennsylvania Rule of Civil Procedure 1033 permits a party, either by filed consent of the adverse parties, or by leave of Court, to amend a pleading.

6. Moving Additional Defendant respectfully requests permission to file the attached Amended Answer, New Matter and Crossclaims to the Joinder Complaint, attached hereto and marked as Exhibit "D".

7. To date no depositions have been taken, and no entries of Appearance have been made by the four dog owners named in the underlying Complaint, Jeffrey Crooks, Mary Crooks, Thomas Gleason, Jr. or Mary Gleason. Further, no responses to Plaintiff's Complaint have yet been filed by said alleged dog owners.

8. Further, no prejudice will result by this Honorable Court's granting of Additional Defendant's Motion to Amend its Answer, New Matter and Crossclaims to the Joinder Complaint. The discovery deadline does not expire until September 4, 2012, and no parties are being added in the Amended Answer to the Joinder Complaint, and, accordingly, no prejudice will result by the granting of this Motion to Amend the Answer and New Matter to the Joinder Complaint.

WHEREFORE, Additional Defendant, Mango and August, Inc. (Incorrectly identified as Bernard August, Individually and t/a Marisa Mango Real Estate) respectfully requests that this Honorable Court grant its Motion to Amend its Answer and New Matter to the Joinder Complaint in this matter in the form attached hereto as Exhibit "D".

MARSHALL, DENNEHEY, WARNER,  
COLEMAN & GOGGIN

BY: Michael J. Dempsey  
MICHAEL J. DEMPSEY, ESQUIRE  
ATTORNEY FOR ADDITIONAL DEFENDANT  
Mango and August, Inc. (Incorrectly identified as  
Bernard August, Indv. and t/a Marisa Mango Real  
Estate)

Date: 2-16-12

Case ID: 10600031  
Control No.: 12022744

MARSHALL, DENNEHEY, WARNER,  
 COLEMAN & GOOGIN  
 BY: MICHAEL J. DEMPSEY, ESQUIRE  
 Identification No. 34454  
 620 Freedom Business Center, Suite 300  
 King of Prussia, PA 19406  
 (610) 354-8498 (610) 354-8299 (FAX)  
 Attorney for Defendants  
 Bernard August, Ind. And t/a Marisa Mango Real Estate

FRANCES JOYCE	:	COURT OF COMMON PLEAS
	:	PHILADELPHIA COUNTY, PA
v.	:	
RICHARD DEVASTAY	:	JUNE TERM, 2011
JEFFREY CROOKS;	:	
MARY CROOKS;	:	
THOMAS GLEASON, JR.;	:	
MARY GLEASON;	:	
CITY OF PHILADELPHIA;	:	
PROGRESS BANK OF FLORIDA;	:	
v.	:	
BERNARD AUGUST, Ind. And	:	
t/a MARISA MANGO REAL ESTATE	:	
Additional Defendant	:	NO. 0031

**MEMORANDUM OF LAW IN SUPPORT OF MOTION OF ADDITIONAL DEFENDANT  
 TO AMEND ITS ANSWER AND NEW MATTER TO THE JOINDER COMPLAINT**

Additional Defendant, Mango and August, Inc. (Incorrectly identified as Bernard August, Individually and t/a Marisa Mango Real Estate), by and through its counsel, submits the following Memorandum of Law in support of its Motion to Amend its Answer to the Joinder Complaint in the above-noted matter.

**I. MATTER BEFORE THE COURT**

Additional Defendant, Mango and August, Inc. (Incorrectly identified as Bernard August, Individually and t/a Marisa Mango Real Estate), respectfully submits this Motion to Amend its



Answer to the Joinder Complaint in the above-noted matter in the form attached hereto, and marked as Exhibit "D".

**II. STATEMENT OF QUESTIONS INVOLVED**

Whether the Additional Defendant should be permitted to Amend its Answer to the Joinder Complaint in the above-noted matter in the form attached hereto and marked as Exhibit "D"?

SUGGESTED ANSWER: Yes.

**III. STATEMENT OF FACTS**

On December 19, 2011, a Joinder Complaint was filed against Moving Additional Defendant by Defendant, Richard Devastey, in the underlying civil action.

On January 26, 2012, an Answer to the Joinder Complaint was filed by Moving Additional Defendant herein. Moving Additional Defendant respectfully requests permission to Amend its Answer to the Joinder Complaint in the form attached hereto and marked as Exhibit "D".

The underlying action, which resulted in the Joinder Complaint being filed by original Defendant, Richard Devastey, constitutes a personal injury claim by Plaintiff, Frances Joyce. In the original Complaint, Plaintiff, Frances Joyce, alleged that, while walking on sidewalks owned by two original Defendants, a dog, owned by four original Defendants, began to attack him, resulting in him falling as a result of defective sidewalks owned by the two property owners. Then, on December 19, 2011, one of the property owners, Richard Devastey, filed a Joinder Complaint against Moving Additional Defendant herein.

Moving Additional Defendant respectfully requests that this Honorable Court grant permission to it to file an Amended Answer to the Joinder Complaint in the form attached hereto and marked as Exhibit "D".



Pennsylvania Rule of Civil Procedure permits a party, either by filed consent of the adverse parties, or by leave of Court to amend a pleading. In that regard, Moving Additional Defendant respectfully requests leave of Court to allow it to file the Amended Answer to the Joinder Complaint, attached hereto. Moving Additional Defendant submits that no prejudice will result by the granting of its Motion to Amend its Answer in this matter. No depositions have been taken to date and no discovery has been answered to date by Plaintiff's counsel or numerous Defendants, and discovery is in its infancy. The discovery deadline in this matter is September 4, 2012. Additionally, four original Defendants have not yet filed Answers to the Complaint, and no prejudice will result to any party in this matter by the granting of Additional Defendant's Motion to Amend its Answer herein.

#### IV. ARGUMENT

Under Pennsylvania Rule of Civil Procedure 1033, a party, either by filed consent of the adverse parties or by leave of Court, may at any time, change the form of action, correct the name of a party, or amend his pleading. Under Rule 1033, the amended pleading may aver transactions or occurrences which have occurred before or after the filing of the original pleading, even though they give rise to a new cause of action or defense.

In the instant matter, Moving Additional Defendant was only recently joined as an Additional Defendant on December 19, 2011, and filed its Answer to the Joinder Complaint on January 26, 2012. No prejudice will result by the granting of Moving Additional Defendant's Motion to Amend its Answer in this matter. The discovery deadline is September 4, 2012, and no depositions have been taken to date, nor have any entries of Appearance or Answers to the Complaint been filed by four of the original Defendants in this matter.

Respectfully, Moving Additional Defendant requests permission to file the attached Amended Answer to the Joinder Complaint in this matter.


V. CONCLUSION

For all of the above-noted reasons, Moving Additional Defendant respectfully requests leave of Court to permit it to file an Amended Answer to the Joinder Complaint in the above-noted civil action in the form attached hereto and marked as Exhibit "D".

Respectfully submitted,

MARSHALL, DENNEHEY, WARNER,  
COLEMAN & GOGGIN

BY:

  
MICHAEL J. DEMPSEY, ESQUIRE  
ATTORNEY FOR ADDITIONAL DEFENDANT  
Mango and August, Inc. (Incorrectly identified as  
Bernard August, Indv. and t/a Marisa Mango Real  
Estate)

DATED: 2/16/12

Case ID: 110600031  
Control No.: 12022744

VERIFICATION

MICHAEL J. DEMPSEY, ESQUIRE, Attorney for Additional Defendant in the above matter, verifies that the facts set forth in the Motion of Additional Defendant to Amend Its Answer and New Matter to the Joinder Complaint are true to the best of his knowledge, information and belief. If the above statements are not true, the deponent is subject to the penalties of 18 PA. C.S. Sec. 904 relating to unsworn falsification to authorities.

  
MICHAEL J. DEMPSEY, ESQUIRE

DATED: 2-16-12

Case ID: 110600031  
Control No.: 12022744

MAI SHALL, DENNEHEY, WARNER,  
 COLEMAN & GOOGIN  
 BY: MICHAEL J. DEMPSEY, ESQUIRE  
 Identification No. 34454  
 620 Freedom Business Center, Suite 300  
 King of Prussia, PA 19406  
 (610) 354-8498 (610) 354-8299 (FAX)  
 Attorney for Defendants  
 Bernard August, Ind. And t/a Marisa Mango Real Estate

FRANCES JOYCE	:	COURT OF COMMON PLEAS
	:	PHILADELPHIA COUNTY, PA
v.	:	
RICHARD DEVASTEY	:	JUNE TERM, 2011
JEFFREY CROOKS;	:	
MARY CROOKS;	:	
THOMAS GLEASON, JR.;	:	
MARY GLEASON;	:	
CITY OF PHILADELPHIA;	:	
PROGRESS BANK OF FLORIDA;	:	
v.	:	
BERNARD AUGUST, Ind. And	:	
t/a MARISA MANGO REAL ESTATE	:	
Additional Defendant	:	NO. 0031

**CERTIFICATION OF SERVICE**

I hereby certify that I have served upon all persons listed below a true and correct copy of  
 MOTION OF ADDITIONAL DEFENDANT TO AMEND ANSWER TO JOINDER  
 COMPLAINT , in the above-captioned matter this date by electronic filing and/or regular mail.

Lee I. Rosenfeld, Esquire  
 MESHA & ASSOCIATES, P.C.  
 123 South 22nd Street  
 Philadelphia, PA 19103

Susan J. Wiener, Esquire  
 LAW OFFICES OF JAMES L. BARLOW  
 900 East 8th Avenue, Suite 301  
 King of Prussia, PA 19406

Case ID: 110600031  
 Control No. 12022744

Pauline J. Manos, Esquire  
CITY OF PHILADELPHIA  
1515 Arch Street, 14th Floor  
Philadelphia, PA 19102

Jeffrey S. Saltz, Esquire  
Lisa B. Wershaw, Esquire  
LAW OFFICE OF JEFFREY S. SALTZ, P.C.  
Two Penn Center Plaza, Suite 1930  
1500 John F. Kennedy Boulevard  
Philadelphia, PA 19102

Jeffrey Crooks  
6708 Dicks Avenue  
Philadelphia, PA 19142

Mary Crooks  
6708 Dicks Avenue  
Philadelphia, PA 19142

Thomas Gleason, Jr.  
66 Springton Road  
Upper Darby, PA 19082

Mary Gleason  
66 Springton Road  
Upper Darby, PA 19082

MARSHALL, DENNEHEY, WARNER,  
COLEMAN & GOGGIN

BY: Michael J. Dempsey  
MICHAEL J. DEMPSEY, ESQUIRE  
ATTORNEY FOR ADDITIONAL DEFENDANT  
Mango and August, Inc. (Incorrectly identified as  
Bernard August, Indv. and t/a Marisa Mango Real  
Estate)

DATE: 2-16-12

Case ID: 110600031  
Control No.: 12022744

TO: Plaintiff and Defendants  
 YOU ARE HEREBY NOTIFIED TO  
 FILE A WRITTEN RESPONSE TO THE  
 ENCLOSED NEW MATTER  
 WITHIN 20 DAYS FROM SERVICE  
 HEREOF OR JUDGMENT MAY BE  
 ENTERED AGAINST YOU.

ATTORNEY FOR ADDITIONAL DEFENDANT

MARSHALL, DENNEHEY, WARNER,  
 C C LEMAN & GOOGIN  
 BY: MICHAEL J. DEMPSEY, ESQUIRE  
 IDENTIFICATION NO.: 34454  
 620 Freedom Business Center, Suite 300  
 King of Prussia, PA 19406  
 (610) 354-8498 (610) 354-8299 (FAX)  
 Attorney for Bernard August, Ind. And t/a Marisa Mango Real Estate

FRANCES JOYCE : COURT OF COMMON PLEAS  
 : PHILADELPHIA COUNTY

v. :

RICHARD DEVASTEY : JUNE TERM, 2011  
 JEFFREY CROOKS; :  
 MARY CROOKS; :  
 THOMAS GLEASON, JR.; :  
 MARY GLEASON; :  
 PROGRESS BANK OF FLORIDA; :

v. :

BERNARD AUGUST, Ind. And :  
 t/a MARISA MANGO REAL ESTATE :  
 Additional Defendants : NO. 0031

**AMENDED ANSWER, NEW MATTER AND NEW CROSSCLAIMS OF ADDITIONAL  
 DEFENDANT, MANGO AND AUGUST, INC.  
 (INCORRECT IDENTIFIED AS BERNARD AUGUST,  
 INDIVIDUALLY AND T/A MARISA MANGO REAL ESTATE)  
 TO JOINDER COMPLAINT OF DEFENDANT, RICHARD DEVASTEY**



Case ID: 110600031  
 Control No.: 12022744

1. Admitted in part; denied in part. It is admitted that Plaintiff, Frances Joyce, filed a Complaint against Defendant, Richard Devastey and other parties. Answering Additional Defendant denies any and all liability to any parties in Plaintiff's Complaint. By way of further Answer, Answering Additional Defendant incorporates herein by reference, his Answer to the Joint Complaint, along with New Matter, as fully as though the same were herein set forth at length.

2. Denied. After reasonable investigation, Answering Defendants Additional Defendant is without knowledge or information sufficient to form a belief as to the truth of this averment and therefore, must deny same.

3. Denied as stated and as conclusions of law to which no responsive pleading is required. By way of further Answer, the allegations in the Complaint speak for themselves and are addressed to parties other than Answering Defendants Additional Defendant herein, and, therefore, this allegation requires no response from Answering Additional Defendant.

4. Denied as stated and as conclusions of law to which no responsive pleading is required. By way of further Answer, the Answer by Richard Devastey to the Complaint speaks for itself and is addressed to parties other than Answering Additional Defendant herein, and, therefore, no response is required from Answering Additional Defendant herein.

5. Denied as stated and as conclusions of law to which no responsive pleading is required. By way of further Answer, the allegations of the Complaint are addressed to parties other than Answering Additional Defendant and, therefore, no response is required from Answering Additional Defendant herein. Further, Answering Additional Defendant denies any allegations in the Complaint as against Answering Additional Defendant and denies any and all liability to Richard Devastey or any other party, including Plaintiff, Frances Joyce.



6. Denied as stated and as conclusions of law to which no responsive pleading is required. By way of further Answer, it is denied that Answering Additional Defendant, Bernard August, trades as Marisa Mango Real Estate herein. To the contrary, Defendant, Bernard August, Individually and t/a Marisa Mango Real Estate is incorrectly identified in the Joinder Complaint of Richard Devastey. The correct identification of the entity is Mango and August, Inc. and not Richard Devastey, Individually and t/a Marisa Mango Real Estate.

7. Denied as stated and as conclusions of law to which no responsive pleading is required. By way of further Answer, it is denied that Additional Defendant, Bernard August, Individually and t/a Marisa Mango Real Estate, had a verbal or other contract with Defendant, Richard Devastey, to manage, maintain, inspect, repair and otherwise be responsible for the property at 6714 Dicks Avenue, Philadelphia, PA. By way of further Answer, it is denied that Additional Defendant, Mango and August, Inc., had a verbal or other contract with Defendant, Richard Devastey to manage, maintain, inspect, repair or otherwise be responsible for the real property located at 6714 Dicks Avenue, Philadelphia, PA. By way of further Answer, these allegations are conclusions of law to which no responsive pleading is required.

8. Denied as stated and as conclusions of law to which no responsive pleading is required. By way of further Answer, by Stipulation between the parties, former Additional Defendant Bernard August, Individually and t/a Marisa Mango Real Estate has been dismissed from this lawsuit and is substituted with Additional Defendant Mango and August, Inc. Further, to the extent that any of these averments are deemed factual, the averments are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e). Additionally, all allegations of negligence, carelessness and/or negligent omissions on the part of Additional Defendant are specifically denied herein. Further, it is denied that Additional Defendant failed to maintain the said real

property in a safe manner and further deny that Additional Defendant failed to inspect the said real property or repair any alleged dangerous conditions on the premises and sidewalk. It is further denied that Additional Defendant failed to report and/or warn Defendant, Devastey and Plaintiff of any alleged dangerous conditions on the premises and sidewalk. By Stipulation between the parties, Paragraph 8(d) has been dismissed. Lastly, all allegations that the alleged damages sustained or suffered by Plaintiff were caused by any negligence, carelessness, or negligent omissions of Additional Defendant are denied.

9. Denied as stated and as conclusions of law to which no responsive pleading is required. By way of further Answer, these averments are denied pursuant to Pa. R.C.P. 1029(e). Further, Additional Defendant denies that Plaintiff's alleged damages were caused in any way by the actions, omissions, carelessness, negligence, breach, or negligent omissions of Answering Additional Defendant herein. Further, Additional Defendant denies that it is liable over to Defendant, Richard Devastey, to Plaintiff's cause of action. By way of Stipulation by the parties, the allegation that Addition Defendant is solely liable to the Plaintiff or jointly or severally liable on Plaintiff's cause of action has been withdrawn and dismissed.

**WHEREFORE**, Additional Defendant, Mango and August, Inc. (Incorrectly previously identified as Bernard August, Individually and t/a Marisa Mango Real Estate), respectfully requests judgment in its favor and against Richard Devastey and against Plaintiff and all other parties herein. Additionally, Answering Additional Defendant respectfully requests that the Joinder Complaint against Additional Defendant be denied and dismissed in its entirety with counsel fees and costs awarded to Answering Additional Defendant. Further, Answering Additional Defendant respectfully requests judgment that it is not liable over to Defendant, Richard Devastey, for contribution or indemnity to Plaintiff's cause of action.

NEW MATTER

1. Upon information and belief, Plaintiff's claims or certain of them are barred and/or reduced by the Pennsylvania Comparative Negligence Act.

2. Upon information and belief, Plaintiff's claims fail to state a cause of action against Additional Defendant upon which relief may be granted.

3. Inasmuch as Pennsylvania Rule of Civil Procedure 1032 provides that a party waives all defenses not presented by way of Answer, Additional Defendant, upon advice of counsel, hereby asserts all affirmative defense not otherwise enumerated herein. As set forth in the Pennsylvania Rules of Civil Procedure 1030, the said affirmative defenses include, *inter alia*, estoppel, immunity from suit, release, statute of limitations, et al. The said affirmative defenses are subject to demonstration during the discovery process and proof at the time of trial.

4. Upon information and belief, the claims and/or injuries and damages alleged by Plaintiff and by Defendant, Richard Devastey, in his Joinder Complaint, are due solely to the conduct of others including entities, individuals and/or parties over whom Answering Additional Defendant had no legal responsibility or control.

5. Upon information and belief, Plaintiff's claims and the claims of Defendant, Richard Devastey, are barred and/or limited by the Doctrine of Release and Accord and Satisfaction.

6. There is and was no written contract between Answering Additional Defendant and Richard Devastey to manage, maintain, inspect, repair, or otherwise be responsible for the real property located at 6714 Dicks Avenue, Philadelphia, PA.

7. Additional Defendant's Joinder Complaint fails to state a cause of action against Additional Defendant upon which relief may be granted.

8. There is no verbal contract between Defendant, Richard Devastey, and the Answering Additional Defendant to manage, maintain, inspect, repair and otherwise be responsible for the real property located at 6714 Dicks Avenue, Philadelphia, PA. The Joinder Complaint of Defendant, Richard Devastey, fails to state a cause of action against Additional Defendant in that it fails to state the date of the purported Contract, the terms for the purported Contract, and the consideration for same.

9. Plaintiffs alleged injuries and damages were not caused by any negligence, carelessness, acts, omissions or failure to act on the part of Answering Additional Defendant herein.

10. Answering Additional Defendant denies that it in any way breached any agreement, verbal or otherwise, to or between Richard Devastey and Answering Defendants Additional Defendant which in any way caused injuries or damages to Plaintiff or Defendant, Richard Devastey, or any other party herein.

11. Answering Additional Defendant denies that it owed any duty of care to Defendant, Richard Devastey, or to Plaintiff or any other party herein.

12. Answering Additional Defendant verbally agreed with Defendant Richard Devastey to assist him in renting the property and to collect rents and to notify him of complaints by tenants relative to the property at 6714 Dicks Avenue, Philadelphia, PA but did not agree, verbally or otherwise, to manage, maintain, inspect, repair and otherwise be responsible for the real property located at 6714 Dicks Avenue, Philadelphia, PA.

13. Richard Devastey has failed to produce any written Contract between him and Answering Additional Defendant and, therefore, his claim for breach of contract must be dismissed.

14. As the owner of the property at 6714 Dicks Avenue, Philadelphia, PA, on the date of the alleged incident, Richard Devastey is responsible and liable for the management, maintenance, inspection, and repair of any dangerous and/or defective conditions on the property, including the sidewalk therein.

15. As owner of the property at 6714 Dicks Avenue, Philadelphia, PA on the date of the alleged incident, Richard Devastey's duty to manage, maintain, inspect, repair and otherwise be responsible for said real property, is a non-delegable duty and, therefore, Richard Devastey remains responsible and liable for the management, maintenance, inspection, repair and responsibility for the said property.

16. Upon information and belief, purported Contracts and Agreements relative to the management, maintenance, inspection, repair and responsibility for real property, must be in writing. The alleged Agreement between Richard Devastey and Answering Additional Defendant may be subject to the Statute of Frauds and cannot form the basis of any alleged breach by Answering Additional Defendant for failure to produce a written Contract with specific terms of the purported Agreement, including the date, terms and consideration for same.

17. To the extent that there was any dangerous or defective conditions on the premises and sidewalk of Richard Devastey's real property located at 6714 Dicks Avenue, Philadelphia, PA on the alleged date of the incident, said conditions were caused by Richard Devastey in failing to manage, maintain, inspect, repair or otherwise be responsible for the said real property.

18. Richard Devastey is not entitled to any protection against liability on a theory of owner/landlord out of possession.

19. Answering Additional Defendant is not liable to Richard Devastey for indemnity or contribution and is not liable over to Richard Devastey herein.

20. Plaintiff's Complaint fails to state a cause of action upon which relief may be granted.

21. To the extent that Plaintiff suffered any injuries and/or damages as alleged, they were caused solely and primarily by Plaintiff's own carelessness, recklessness and negligence and/or the negligence of others named in Plaintiff's Complaint.

22. To the extent that Plaintiff suffered injuries and damages as alleged, the injuries and damages were caused by and the result of Plaintiff's failure to observe where he was walking and/or by the alleged dog chasing him and not by any dangerous or defective condition of the sidewalk at 6714 Dicks Avenue, Philadelphia, PA.

23. To the extent that any dangerous or defective conditions existed on the property at 6714 Dicks Avenue, Philadelphia, PA on the date alleged, which is denied, said conditions were open and obvious to Plaintiff Joyce and therefore any recovery by him is barred or reduced by the Comparative Negligence Act.

24. Upon information and belief, Plaintiff, Joyce, may have failed to mitigate his damages.

25. To the extent that Plaintiff, Joyce, sustained injuries or damages as alleged in his Complaint, said injuries and damages were caused solely and/or in part by the negligence and carelessness of Defendants, Jeffrey Crooks, Mary Crooks, Thomas Gleason, Jr. and Mary Gleason as alleged in Count IV of Plaintiff Joyce's Complaint, including Paragraphs 43 through 50, inclusive.



26. To the extent that Plaintiff sustained injuries or damages as alleged in his complaint, said injuries and damages were caused solely and/or in part by the negligence and carelessness of Defendants, Progress bank and City of Philadelphia as alleged in Counts II and III of Plaintiff's Complaint.

27. To the extent that Plaintiff sustained injuries or damages as alleged in his complaint, said injuries and damages were caused solely and/or in part by the negligence and carelessness of Defendant, Richard Devastey, as alleged in Count I of Plaintiff's Complaint.

WHEREFORE, Answering Additional Defendant respectfully requests that judgment be entered in its favor and against Defendant, Richard Devastey, and against Plaintiff and all other parties herein. Further, Answering Additional Defendant respectfully requests judgment in its favor and against Defendant, Richard Devastey, relative to his claim against Answering Additional Defendant herein. Further, Answering Additional Defendant respectfully requests judgment in its favor that it is not liable to Richard Devastey for indemnity or contribution to Plaintiff's cause of action.

**NEW MATTER IN THE NATURE OF CROSSCLAIMS AGAINST DEFENDANTS, RICHARD DEVASTEY, JEFFREY CROOKS, MARY CROOKS, THOMAS GLEASON, JR., MARY GLEASON, PROGRESS BANK OF FLORIDA AND FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER AND SUCCESSOR TO DEFENDANT, PROGRESS BANK OF FLORIDA AND CITY OF PHILADELPHIA**

28. Answering Additional Defendant incorporates herein by reference all paragraphs of Plaintiff's Complaint, Joinder Complaint, and Answering Additional Defendant's Amended Answer, New Matter and New Matter Crossclaims as fully as though the same were herein set forth at length.

29. Answering Additional Defendant, Mango and August, Inc. (Incorrectly identified as Bernard August Individually and t/a Marisa Mango Real Estate), denies any and all liability to



Plaintiff and to any and all parties named in Plaintiff's civil action and in the Joinder Complaint by Defendant, Richard Devastey. Further, although Answering Additional Defendant denies liability on the part of all of the Defendants in this matter, nonetheless, if, and only if, the allegations in Plaintiff's Complaint and/or the Joinder Complaint, or certain of them, are true and proven, then it is averred that the conditions complained of were caused solely or in part by the negligence, carelessness, acts, omissions and/or other tortious conduct on the part of Defendants, Richard Devastey, Jeffrey Crooks, Mary Crooks, Thomas Gleason, Jr., Mary Gleason, Progress Bank of Florida/Federal Deposit Insurance Corporation as Receiver and Successor to Progress Bank of Florida, and City of Philadelphia, and from the said Defendants, Additional Defendant, Mango and August, Inc. (Incorrectly identified as Bernard August Individually and t/a Marisa Mango Real Estate), demand indemnity and contribution, together with reasonable counsel fees and costs.

Respectfully submitted,

MARSHALL, DENNEHEY, WARNER  
COLEMAN & GOGGIN

By: \_\_\_\_\_  
MICHAEL J. DEMPSEY, ESQUIRE  
Attorney for Additional Defendant  
Mango & August, Inc.  
(Incorrectly identified as Bernard August Indv.  
And t/a Marisa Mango Real Estate)

Date:

26/18/1248.v1

VERIFICATION

Michael J. Dempsey, Esquire, Attorney for Additional Defendant, being duly sworn according to law deposes and says that the facts set forth in the foregoing Amended Answer, New Matter and New Matter Crossclaims of Additional Defendant, Mango and August, Inc. (Incorrectly identified as Bernard August, Indv. and t/a Marisa Mango Real Estate) to Joinder Complaint are true and correct to the best of his knowledge, information, and belief. This verification is subject to 18 U.S.C. §4904 which provides for certain penalties for making false statements.

\_\_\_\_\_  
MICHAEL J. DEMPSEY, ESQUIRE

DATE: \_\_\_\_\_

**CERTIFICATE OF SERVICE**

I, MICHAEL J. DEMPSEY, hereby certify that I electronically filed, on the date indicated, Additional Defendant Mango and August, Inc.'s (Incorrectly identified as Bernard August, Individually and t/a Marisa Mango Real Estate) Amended Answer, New Matter and New Matter Crossclaims to Joinder Complaint of Richard Devastey, and will be served as follows:

1. Electronically by the Court, in accordance with Pa. Pa. R.C.P. 205.4(G); and can be viewed by counsel; or

2. In accordance with Pa. R.C.P. 440 via US. First Class Mail upon all parties not served electronically.

MARSHALL, DENNEHEY, WARNER,  
COLEMAN & GOGGIN

BY: \_\_\_\_\_

Michel J. Dempsey, Esquire  
Attorney for Defendant Mango and August,  
Inc. (Incorrectly identified as Bernard  
August, Individually and t/a Marisa Mango  
Real Estate)

DATED: